IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14988 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DHRANGADHRA CHEMICAL WORKS LTD & 1 - Petitioner(s)

Versus

UNION OF INDIA THR' SECRETARY & 1 - Respondent(s)

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Appearance :
MR PARESH M DAVE for Petitioners
MR JITENDRA MALKAN for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2,
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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 30/09/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1.Heard Mr.Paresh M.Dave, the learned advocate for the

petitioners and Mr.Y.N.Ravani, the learned additional standing counsel for the respondents.

2. Rule. Mr.Ravani waives service of rule and the petition is taken up for hearing and final disposal today with the consent of learned counsel for the respective parties.

3. On 20/10/2004, the petitioners had been directed by this Court by an order made in Special Civil Application NO.9745 of 2002 to file appeal before the appellate authority under Section 128 of the Customs Act, 1962. The appellate authority was directed to condone the delay in filing the appeal late and decide the same on merits in accordance with law after affording an opportunity of hearing, provided the appeal was filed within four weeks from the date of the order along with application for condonation of delay.

4. It is an admitted fact that the petitioners did file the appeal as directed by this Court, but the application for condonation of delay did not accompany the appeal. In the circumstances, Commissioner (Appeals) dismissed the appeal by his order dated

13/5/2005 treating the appeal as not being maintainable in the circumstances. It is this order which is under challenge.

5. One Shri G.Raman, Executive Vice President (Foreign Trade) of the petitioner Company has filed affidavit dated 3rd August 2005 and accepted that there was a lapse in complying with the directions of the Court inasmuch as that though the appeal was filed within the stipulated period of four weeks, the application for condonation of delay remained to be filed along with the appeal. It is in these circumstances that the petitioners have prayed that the order of commissioner (Appeals) dated 13/5/2005 (Annexure “D”) be quashed and the Commissioner (Appeals) be directed to hear and decide the appeal on merits.

6. Mr.Ravani appearing on behalf of the respondent authorities has very fairly submitted that, in case the petitioner files an application seeking condonation of delay in the circumstances, the appellate authority shall consider the same and hear the petitioners on merits.

7. In the circumstances and the backdrop of facts stated hereinbefore, it is apparent that the petitioner was not inclined to give up his right of appeal at any stage and was pursuing the statutory remedy; before that the petitioner had challenged the order in original before this Court. In these circumstances, denying petitioner's right of appeal which is granted by the statute only on technical ground, would result in injustice. The petitioner must be granted an opportunity of hearing, and such hearing must be an effective hearing on merits of the dispute between the parties.

8. Accordingly, the petitioner is directed to file an application seeking condonation of delay on or before 10th October 2005. In the event, the application seeking condonation of delay is filed by the aforesaid date, the Commissioner (Appeals) shall, in the first instance, deal with the said application, condone the delay, and thereafter, take up the appeal for hearing on merits.

9. The impugned order dated 13/5/2005 being Order in Appeal No.149/2005 is hereby quashed and set aside. The

appeal stands restored to file. The petition is accordingly allowed. Rule made absolute.

10.In the peculiar facts and circumstances of the case, the petitioner shall bear the costs payable to the respondent revenue quantified at Rs.2,500/-.

[D.A.MEHTA, J.]

[HARSHA DEVANI, J.]

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